HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.7880 of 2007

Dated:27.04.2007

Between:

K.Krishna Kishore

…Petitioner

And:

Govt. of A.P., Co-Operative Dept.,
Reptd., by its Commissioner for Co-Operation
and Registrar of Co-Operative Societies,
Hyderabad and four others.

…Respondents

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ORDER:

The petitioner obtained loan from Malkipuram Branch of the District Co-Operative Central Bank Limited, East Godavari District, Kakinada. Proceedings were initiated by the respondents, against the petitioner, for recovery of the loan amount, which he fell due. The petitioner approached the respondents with a prayer to close the account, by extending the facility of one time settlement.

In the recent past, the petitioner came to know that the respondents are not extending the benefit of one time settlement, on the ground that the mortgaged property was

already set off through separate proceedings dated 30.01.2004 and 23.01.2004. The petitioner challenges the action of the respondents.

Heard learned counsel for the petitioner and learned counsel for the respondents.

As a security for redemption of the loan obtained by him, the petitioner mortgaged a substantial extent of property. It is no doubt true that the recovery certificate was issued against the petitioner and the mortgaged property was brought to sale. However, on the ground that no bids have been offered, the respondents have set off the property to themselves.

The set off claimed by the respondents cannot be sustained for more reasons than one. Even where the property is set off, the authorities concerned are under obligation to get its value assessed and furnish the accounts thereof to the lonee. If the value of the property is excessive, the lonee is entitled to be refunded the excess value and on the other hand, if it is less, the lonee would be under obligation to pay the same. Secondly, the set off must entail in conveyance of the property and the owner thereof must be intimated about the factum of set off.

Admittedly, in the instant case, none of these steps has taken place, except that the respondents have issued proceedings, stating that the property is set off. The plea taken by the respondents cannot be accepted. The right of the petitioner to seek foreclosure of the mortgage remains unaffected.

Accordingly, the writ petition is allowed and it is directed that the petitioner shall be entitled to foreclose the mortgage by paying the accrued amount. If the petitioner is otherwise entitled to any benefit of one time settlement, he shall be extended the same, notwithstanding the then developments. There shall be no order as to costs.

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L.NARASIMHA REDDY, J

27.04.2007
dr